IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3184 OF 2006

Subhash Bikhaji Mhapankar Applicant
versus
The State of Maharashtra & anr. Respondents

WITH
CRIMINAL APPLICATION NO.3185 OF 2006

Arun Ganpat Sawant Applicant
versus
The State of Maharashtra Respondent

WITH
CRIMINAL APPLICATION NO.3178 OF 2006

Guruprasad S. Shirsat & ors. Applicants
versus
Anil G. Purat & anr. Respondents

Shri A.P. Mundargi for applicant in 3184/2006
Shri S.R.Chitnis, Sr.Adv. for intervenor.
Shri P.A.Pole, APP for respondents.

Shri S.S.Shetye for applicant in 3185/2006
Shri V.V.Gangurde for respondent no.2.
Shri S.R.Chitnis, Sr.Adv. for intervenor.

Shri Shirish Gupte i/by Meghashyam Kocharekar for applicants in 3178/2006.
Ms.R.M.Gadhavi, APP for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th September 2006

PC :

1. These three applications can be conveniently disposed off by a common order. The second

respondent is the original complainant. He had filed a private complaint against the applicants alleging offences of criminal breach of trust, misappropriation, cheating and forgery etc.. It appears from the record that upon this complaint, the Magistrate directed investigation under section 156(3) of Code of Criminal Procedure. Thereafter, M.E.C.R. No.18 of 2006 was registered. The applicants were arrested and produced before the learned Metropolitan Magistrate who enlarged them on bail.

2. It further appears that along with the applicants the complainant also is an accused in C.R.No.225 of 2005. This was a State prosecution because in the view of its Urban Development Department under the Urban Land Ceiling Act, after an exemption order is issued in favour of the holder of surplus vacant land, conditions are imposed to surrender specific percentage of flats for Government Nominees. In the instant case, about 22 flats were to be surrendered by the co-operative housing society of which all applicants so also the complainant is a member. The flats were not surrendered and instead an application was made that in lieu of the same, some amount may be directed to be paid to

compensate the loss of tenements/flats. Accordingly, a sum of Rs.1.56 crore was directed to be paid but it was subsequently reduced to a sum of Rs.30 lakh. Since default was committed in paying the above sum, aforesaid C.R. came to be lodged. In this C.R. Applicant in Criminal Application No.3184 of 2006, the General Secretary, was taken in custody but subsequently enlarged on bail.

3. Be that as it may, the original complainant-respondent no.2 before me was aggrieved and dissatisfied with the order of learned Metropolitan Magistrate in enlarging the applicants on bail in M.E.C.R. No.18 of 2006 on the same day and, therefore, preferred an application u/s 439(2) of the Cr.P.C. before learned Sessions Judge. Learned Sessions Judge after hearing the applicants so also the State proceeded to cancel the bail and directed that the applicants be taken in custody.

4. Aggrieved and dissatisfied with this order and direction of the Additional Sessions Judge the present application is filed. Apart from quashing the same, relief prayed is that the applicants be enlarged on bail.

5. I have heard Shri Mundargi and Shri Gupte - learned Senior Counsel so also Shri Shetye for applicants in each of these applications. In their submission, the criminal complaints are containing two distinct allegations. There cannot be a confusion with regard to the obligation towards Urban Land Ceiling Department and the alleged lapses or acts of omission and commission during the course of management of the co-operative housing society. It is the later allegation which is subject matter of the complaint before the Magistrate. They submit that several acts of the General Body and Managing committee of the society are subject matter of the private complaint. They submit that the society consists of Ex-Air India Employees and each of the applicant is a responsible citizen having firm roots and either serving or retired from services. It is not as if they were unaware of their obligations and duties in law, while managing the affairs of the co-operative housing society. The allegation is that the applicants have misappropriated funds of the society. In their submission, the learned Judge has confused the allegations in two distinct CRs/MECR.. One is alleging a violation

of the provisions of the Maharashtra Co-operative Societies Act and the Maharashtra Ownership of Flats Act whereas other pertains to the obligation under the Urban Land Ceiling Act. It is contended that the allegations pertaining to not holding annual general meeting and non submission of accounts, have been linked and mixed up with the obligation under Urban Land Ceiling Act. It is in these state of affairs that the learned Magistrate while making a distinction, has enlarged the applicants on bail. Such an order requires no interference. Moreso, when the applicants have co-operated in the investigation and from time to time given clarifications and handed over copies of documents to the Investigating Machinery. According to them, it is pertinent to note that the investigating machinery is not seeking the relief of cancellation but it is the original complainant who had moved the application claiming the same. In such circumstances and now that the applicants have attended the Police Station and handed over all documents, it is a fit case where they should be enlarged on bail.

6. The applications are opposed by the original complainant. Shri Chitnis - learned Senior

Counsel appearing for them has invited my attention to the allegations in the private complaint filed by respondent no.2-original complainant. The grievance is that serious offences have been committed under IPC as well as Maharashtra Ownership of Flats Act. Once the Magistrate was satisfied that there is substance in the allegations and they disclose prima facie commission of the offences under the aforesaid Acts and he directed investigations being carried out, then upon arrest of the applicants, there was no reason for denying the State Police custody remand and enlarging the applicants on bail. He has pointed out that the order of the learned Sessions Judge does not require any interference as it takes into account the gross irregularity committed by the learned Metropolitan Magistrate and corrects the same in exercise of the jurisdiction of learned Sessions Judge u/s 439(2) of Cr.P.C.. Such a course of action does not require any interference either in this Court's inherent jurisdiction or otherwise. Hence, the applications be dismissed.

7. Learned APP has not disputed the fact that pursuant to the order passed by this Court on 25th August 2006 the applicants have reported to

the concerned Police Station. Similarly, my attention is invited to an order passed by me on 8th September 2006. The applicants have attended the Police Station and Shri Mhapankar who is the applicant in the first application, has, after attending, clarified several aspects. The original pass books and books of accounts maintained by the society, have been handed over. Further, all applicants are ready and willing to co-operate in the investigations and abide by such conditions as are imposed by this Court. They have no criminal antecedents. There is no apprehension that they will in any manner tamper with the prosecution witnesses or would not otherwise be available at trial.

8. I have considered the rival contentions. I have perused the complaint and the annexures to each of the applications including the impugned order. The learned Judge appears to have been greatly influenced by the fact that the learned Metropolitan Magistrate has in the teeth of some serious charges enlarged the applicants on bail. Such serious charges being levelled and the applicants being produced, there was no occasion for the learned Metropolitan Magistrate to forthwith release them on bail. The learned

Sessions Judge has observed that on perusal of the remand report there is a request made by the investigating officer for grant of police custody. The request was not accepted and the applicant was remanded to Judicial custody. On the very day the application for bail came to be filed and despite objection raised by the learned Public Prosecutor, the Metropolitan Magistrate proceeded to release the applicants on bail. The learned Sessions Judge has, therefore, criticised the manner in which the application for bail was dealt with by the learned Metropolitan Magistrate and has termed the order passed by him as vitiated by non application of mind.

9. In my view, the approach of the learned Magistrate may not be wholly in accordance with law. The question is whether the applicants deserve to be enlarged on bail at all or not. I have considered the matter on the basis of the allegations in the complaint which is a private complaint. It appears that only the complainant has come forward to challenge the order of the learned Metropolitan Magistrate. The State Government has also lodged C.R. in which the Urban Land Ceiling Department/wing of the State Government has serious grievance with regard to

not handing over 22 flats which were earmarked for Government Nominees. In this C.R. the applicants are enlarged on bail. That bail is not cancelled. That order is not subject matter of challenge. Once this is the position, then it was not open for the Additional Sessions Judge to have relied upon the allegations regarding breach of obligations and duty to hand over 22 flats and connected them with the private complaint filed by the respondent no.2. Ultimately, on the basis of the investigations and directions of the Magistrate the Police have proceeded and taken into custody several documents. The Police have also interrogated the concerned persons including the office bearers of the society. The case will now proceed on the basis that the report of the Police pursuant to Section 156(3) would constitute an FIR and thereafter all steps as are necessary in law, would be taken. In such state of affairs the learned Judge ought to have restricted the scope of enquiry to the approach of the Magistrate in enlarging the applicants on bail in the private complaint. The allegations therein only ought to have been looked into. However, the learned Judge made certain general observations and sweeping remarks by including even the obligation to hand over 22 flats. It is

in these circumstances that the Additional Sessions Judge has termed the order of the Magistrate as illegal.

10. Further, in para 16 of the order the learned Sessions Judge has proce,eded to observe as under:-

> "16. Other fact which is necessary to be considered is that even after lapse of about one and half months, as yet Investigating Officer is not in a position to seize the account books of the society. It appears that the opponents have given only the copies of balance-sheets to the IO. On the basis of such balance-sheet it is not possible to find out whether there is any misappropriation of funds of the society. Even the IO has not received other papers from the opponents in order to ascertain as to what was the total area of land owned by the society and how much of it was utilised for construction of the buildings and what happened to be remaining land if any."

11. Thus, the learned Judge was also influenced by the fact that Accounts Books and other documents have not been handed over or taken in custody.

12. The learned Judge was very much aware that merely because there is a prima face, does not mean that the applicants does not deserve to be

enlarged on bail. With some general observations and remarks he has proceeded to cancel the bail. Apart from the fact that I have scrutinised the order of the Additional Sessions Judge carefully, additionally, I have satisfied myself from the materials produced before me that this is not a fit case for cancellation of bail once the applicants have attended the Police Station and in fact were in custody during the hearing of the subject application before the Additional Sessions Judge, to my mind, the order of the learned Sessions Judge cannot be sustained. For the reasons that I have recorded above including that the applicants having no antecedents, no material being produced with regard to their non availability at trial, this is a fit case where each of them deserves to be enlarged on bail. Accordingly following order.

13. ORDER :-

(i) The applicants shall be enlarged on bail in connection with M.I.C.R. No.18 of 2005 registered with Boriwali Police Station, Mumbai subject to furnishing a personal bond of Rs.10,000/- (Rs.Ten Thousand only) with one or two local sureties in the like sum till

conclusion of trial;

(ii) The applicants shall report once in a week till trial is concluded to Investigating Officer attached to Borivali Police Station;

(iii) The applicants shall forthwith deposit their passports with the Investigating Officer before release. Deposit of passports is condition precedent for release on bail;

(iv) The applicants shall furnish their residential addresses where propose to reside after bail and during pendency of trial, to the Investigating Officer. They shall not change their residence without prior intimation to the Investigating Officer;

(v) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(vi) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the

trial may be a ground for cancellation of bail.

(vii) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(viii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)